

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2
3 In the Matter of

Board Case No. MD-08-0430A

4 **KENNETH M. FISHER, M.D.**

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER**

5 Holder of License No. 12762
6 For the Practice of Allopathic Medicine
In the State of Arizona.

(Letter of Reprimand and Probation)

7
8 The Arizona Medical Board ("Board") considered this matter at its public meeting
9 on April 1, 2009. Kenneth M. Fisher, M.D., ("Respondent") appeared before the Board
10 for a formal interview pursuant to the authority vested in the Board by A.R.S. § 32-
11 1451(H). The Board voted to issue Findings of Fact, Conclusions of Law and Order
12 after due consideration of the facts and law applicable to this matter.

13 **FINDINGS OF FACT**

14 1. The Board is the duly constituted authority for the regulation and control of
15 the practice of allopathic medicine in the State of Arizona.

16 2. Respondent is the holder of License No. 12762 for the practice of
17 allopathic medicine in the State of Arizona.

18 3. The Board initiated case number MD-08-0430A after receiving a complaint
19 regarding Dr. Fisher's care and treatment of a 31 year-old female patient ("AA") alleging
20 improper medication injection and failure to diagnose and treat AA's condition.

21 4. On October 31, 2007, AA presented to Dr. Fisher's office with a complaint
22 of hives. Dr. Fisher diagnosed AA with urticaria, although his progress note did not
23 contain a description of the findings.

24 5. Dr. Fisher documented that he recommended Alavert. There was a
25 separate sheet in Dr. Fisher's records that shows that a Medrol Dosepak was
26 prescribed; however, there is no mention of this in the progress note.

1 6. On November 2, 2007, AA returned to Dr. Fisher's office complaining of
2 itching, swelling, and hives. AA was diagnosed with urticaria and dermatographic hives.

3 7. AA alleged that she received a shot in the arm and different oral
4 antihistamines, and that Dr. Fisher did not inform her of what injection was being given.
5 Dr. Fisher stated that, at that time, the risks and benefits of oral and injectable steroids
6 were explained to AA; however, this conversation was not documented in the medical
7 record.

8 8. According to AA's medical records, a Kenalog injection was given to her in
9 the left arm. The Board's Outside Medical Consultant noted that the package insert for
10 Kenalog injection states: "Unless a deep intramuscular injection is given, local atrophy
11 is likely to occur. Due to the significantly higher incidence of local atrophy when the
12 material is injected into the deltoid area, this injection site should be avoided in favor of
13 the gluteal area."

14 9. In letter to Board staff dated May 19, 2008, Respondent stated, "We
15 explained to [AA] that we do not give these injections in the hip and buttock because of
16 the higher risk of fat degradation; that if given in the deltoid muscle deeply has (sic) the
17 greatest benefit with the least risk."

18 10. During the formal interview, Respondent also claimed that the patient
19 refused a gluteal injection, although he admitted that this fact was not noted in the
20 medical record. He also asserted that the patient, who weighed 115 lbs., had "a
21 generous amount of fat in her hip area" and his medical assistant was concerned that
22 the needle would not reach into the deep muscle.

23 11. On January 14, 2008, AA returned and reported that her rash seemed to
24 be related to anxiety and stated that she had a "hole" in her arm where she received the
25 injection. Dr. Fisher did not document any description of AA's arm in the chart.

12. During the formal interview, Respondent admitted to the Board members that "documentation of the patient's complaint did not adequately give you all the information that you all needed."

13. The standard of care when administering an intramuscular injection requires a physician to inject in the patient's gluteal area.

14. Dr. Fisher deviated from the standard of care by injecting intramuscular steroid into AA's arm.

15. AA described a "hole" in her arm, which is consistent with atrophy of subcutaneous fat, a harm that is more likely if administering a steroid injection in the arm.

16. Respondent received Letters of Reprimand from the Board in 2008 and 2009 for violations of A.R.S. §32-1401(e) and §32-1401(q).

CONCLUSIONS OF LAW

1. The Arizona Medical Board possesses jurisdiction over the subject matter hereof and over Respondent.

2. The Board has received substantial evidence supporting the Findings of Fact described above and said findings constitute unprofessional conduct or other grounds for the Board to take disciplinary action.

3. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. §§ 32-1401(27)(e) – (“Failing or refusing to maintain adequate records on a patient”) and A.R.S. §32-1401(27)(q) – (“Any conduct that is or might be harmful or dangerous to the health of the patient or the public.”)

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,
IT IS HEREBY ORDERED:

1. Respondent is issued a Letter of Reprimand.

1 2. Respondent is placed on probation for one year with the following terms
2 and conditions:

3 a. Continuing Medical Education

4 Respondent shall within one year of the effective date of this Order obtain 15 –
5 17.5 hours of Board Staff pre-approved Category I Continuing Medical Education (CME)
6 in medical recordkeeping and 15 - 20 hours of CME in prescribing. Respondent shall
7 provide Board Staff with satisfactory proof of attendance. The CME hours shall be in
8 addition to the hours required for the biennial renewal of medical license. The probation
9 shall terminate upon successful completion of the CME.

10 b. Obey All Laws

11 Respondent shall obey all state, federal and local laws, all rules governing the
12 practice of medicine in Arizona, and remain in full compliance with any court ordered
13 criminal probation, payments and other orders.

14 c. Tolling

15 In the event Respondent should leave Arizona to reside or practice
16 outside the State or for any reason should Respondent stop practicing medicine in
17 Arizona, Respondent shall notify the Executive Director in writing within ten days of
18 departure and return or the dates of non-practice within Arizona. Non-practice is
19 defined as any period of time exceeding thirty days during which Respondent is not
20 engaging in the practice of medicine. Periods of temporary or permanent residence or
21 practice outside Arizona or of non-practice within Arizona, will not apply to the reduction
22 of the probationary period.

23 3. The Board retains jurisdiction and may initiate new action based upon any
24 violation of this Order.

25 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

1 Respondent is hereby notified that he has the right to petition for a rehearing or
2 review. The petition for rehearing or review must be filed with the Board's Executive
3 Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The
4 petition for rehearing or review must set forth legally sufficient reasons for granting a
5 rehearing or review. A.A.C. R4-16-103. Service of this order is effective five (5) days
6 after date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review is not
7 filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to
8 Respondent.

9 Respondent is further notified that the filing of a motion for rehearing or review is
10 required to preserve any rights of appeal to the Superior Court.

11 DATED this 4th day of June, 2009.



THE ARIZONA MEDICAL BOARD

14 By: *Lisa S. Wynn*
15 *for* LISA S. WYNN
16 Executive Director

17 ORIGINAL of the foregoing filed this
4th day of June, 2009 with:

18 Arizona Medical Board
19 9545 East Doubletree Ranch Road
Scottsdale, Arizona 85258

20 Executed copy of the foregoing
21 mailed by U.S. Mail this
4th day of June, 2009 to:

22
23 Kenneth M. Fisher, M.D.
Address of Record

24 *Kenneth M. Fisher*
25 Investigational Review
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